IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

Crl.MC.No. 314 of 2003()

MC.46/2001 of SUB DIVISIONAL MAGISTRATE, PALAKKAD

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PETITIONER:

UDAYAKUMAR, S/O.VELAYUDAN,
@ CHANDRAN, AGED 38 YEARS, KOTTAMPOTTA
HOUSE, MELARKODE P.O., VADAKETHARA AMSOM, ALATHUR
TALUK, PALAKKAD DT. REPRESENTED BY HIS POWER OF
ATTORNEY HOLDER K.C.DEVADAS, KOTTAMPOTTA HOUSE,
MELARKODE P.O., ALATHUR TALUK, PALAKKAD DT.

BY ADV. SRI.P.K. ABOOBACKER(EDATHALA)
SMT.P.R.ROSHNA

RESPONDENTS:

1. THE SUB DIVISON MAGISTRATE, PALAKKAD.

2. SMT.V.K.KRISHNAKUMARI,
KANAKATH KALAM, THEKKETHARA,
MELARKODE P.O., ALATHUR,
PALAKKAD DT.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR
SRI.P.R.VENKETESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.P. NO. 315/2003 IN CRL. M.C. NO. 314/2003

DISMISSED

21.11.2006 SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A. to Judge.

K.R. UDAYABHANU, J

CRL. M.C. NO. 314 OF 2003

Dated this the 21st day of November 2006

ORDER

The petitioner who has been directed to appear before the court of Sub Divisional Magistrate vide Annexure A3 order issued under section 133 Cr.P.C has sought for setting aside the proceedings initiated alleging that the Sub Divisional Magistrate has no jurisdiction as the matter was confined to the dispute in between the petitioner and the second respondent who had initiated proceedings before the Sub Divisional Magistrate. According to the petitioner he had constructed a residential building as per permission obtained vide Annexure A1. He has denied the existence of the 'chal' through his property. It is the specific case that section 133 will not be attracted as there is no case of public nuisance and the general public would be affected.

I find that the counsel for R2/complainant had contended that flow of water to the other paddy fields are also obstructed by

the construction of the building by the petitioner herein. It is pointed out that in Annexure A3 order it is specifically mentioned that the flow of water to the other fields are obstructed. In the circumstances and in view of the wording in Annexure A3, conditional order that the petitioner shall remove obstruction of flow of water to other fields the petitioner is directed to appear before the court of Sub Divisional Magistrate and raise his contentions based on facts that there was no such water channel etc. Sub Divisional Magistrate shall consider the same and dispose of the matter on merits. The Crl. M.C is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

RV